

*Government of the District of Columbia*  
Office of Zoning



**ZONING COMMISSION ORDER NO. 04-06/02-17A**  
**ZONING COMMISSION CASE NO. 04-06**  
**(Modification to a Consolidated Planned Unit Development**  
**and Zoning Map Amendment for 5401 Western Avenue)**  
**March 8, 2004**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on March 8, 2004. At the meeting, the Commission approved an application from Stonebridge Associates 5401 LLC (the “Applicant”) for minor modifications to an approved planned unit development (“PUD”) and related Zoning Map amendment for the proposed new apartment house at 5401 Western Avenue, N.W., pursuant to Chapter 24 and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. Because the modifications were deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

**FINDINGS OF FACT**

By Z.C. Order No. 02-17, dated August 22, 2003, the Commission approved a PUD and related Zoning Map amendment for property located at the intersection of Western Avenue, N.W. and Military Road, N.W. (the “Site”). The Site consisted of Lot 805 and a portion of Lot 7 in Square 1663. The apartment building approved in Z.C. Order No. 02-17 (the “Project”) was to have approximately 182,000 square feet of gross floor area, not to exceed a density of 4.15 FAR, with a maximum building height of 78.75 feet. The roof structure was to be a maximum of 18.5 feet in height above the roof. The Project was to provide a minimum of 1.1 parking spaces per dwelling unit plus four (4) parking spaces for employees and/or staff of the proposed day care center.

On September 22, 2003, the Friendship Heights Organization for Reasonable Development (“FHORD”) filed a Petition for Review of Z.C. Order No. 02-17 in the District of Columbia Court of Appeals (Case No. 03-AA-1004). Thereafter, the Applicant entered into settlement discussions with FHORD in an attempt to resolve outstanding issues regarding the Project. FHORD and the Applicant successfully resolved their differences and on February 12, 2004, the parties signed a settlement agreement.

Under the terms of the Agreement, the Applicant agreed to make minor modifications to the Project to reduce the building density, reconfigure the penthouse, impose restrictions on parking, improve the building's design, and enhance the construction management plan. In exchange, FHORD agreed to withdraw its Petition for Review before the D.C. Court of Appeals.

The Applicant, therefore, seeks the Zoning Commission's approval of the following minor modifications:

- To provide not less than 1.1 accessible parking spaces for each proposed dwelling unit, plus four (4) spaces in the garage for the day care center plus eight surface parking spaces adjacent to the day care center, although additional tandem spaces for residents may be provided in the garage;
- To impose conditions on the condominium regime that will be established regarding control of parking in the project;
- To reduce the maximum permitted gross floor area to 173,000 square feet from the approved gross floor area of approximately 182,000 square feet, with a resulting reduction in density from 4.15 FAR to 3.95 FAR on Lot 805, thereby eliminating the necessity for the Commission to approve the five percent (5%) increase in density allowed by § 2405.3;
- To reduce the height of the roof penthouse from 18.5 feet to 10 feet, and approve a reconfigured penthouse with setbacks greater than 1:1 from the edge of the roof;
- To substitute a new exterior design for the building reflecting the reconfigured penthouse; accommodating the reduction in density, the new roof structure configuration, and the reduction in height of the roof structure; and including a water feature in the open space while not resulting in a reduction in the distance from the residential building or the day care building to any neighboring residential building or in a reduction of the amount of open space on the site; and
- To enhance the construction management agreements to provide additional protections for the closest residences to the site.

The requested modifications do not affect the essential elements of the approval given by the Zoning Commission for this project, such as use, height, lot occupancy, setbacks, or number of parking spaces. The change in density is a small reduction and the change in roof structure height is also a reduction with greater setbacks. The request also does not change any of the approved elements of the benefits/amenity package.

These changes resolve the litigation over the Commission's approval of the project and would allow construction of the project to proceed promptly.

Copies of the Request for Minor Modification were delivered to all parties to the approved PUD, including Advisory Neighborhood Commission (“ANC”) 3E, FHORD, all of the individuals who were granted party status in the case (Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, and Martin Rojas), and ANC 3/4G. ANC 3E voted unanimously to endorse the proposed modifications as a Consent Calendar item. FHORD and the individual parties likewise supported approval of the modifications as a Consent Calendar item. ANC 3/4G did not submit a written response to the proposed modifications.

The Office of Planning (“OP”), by memorandum dated March 1, 2004, recommended approval of the modifications with certain minor changes to the proposed conditions. On March 8, 2004, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the approved PUD. The Commission included OP’s recommendations in the conditions set forth below.

The Commission finds that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Commission concludes that the proposed modifications are minor and do not change the intent of the previously approved Z.C. Order No. 02-17. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and does not impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

Approval of the modifications is not inconsistent with the Comprehensive Plan. The proposed modifications do not impact the essential elements of the approved PUD, including use, height, lot occupancy, setbacks, or number of parking spaces. The material facts relied upon by the Commission in approving the PUD in Z.C. Order No. 02-17 have not changed. The parties to the case have supported the proposed modifications and have also endorsed action by the Commission on the Consent Calendar. The modifications are of such a nature that consideration as a Consent Calendar item without public hearing is appropriate.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for minor modifications of an approved PUD for the property located at 5401 Western Avenue, N.W. (Lot 805 and a portion of Lot 7 in Square 1663), to modify Z.C. Order No. 02-17 as follows:

1. Condition No. 1 shall be revised to read as follows:

The PUD shall be developed in accordance with the plans, dated February 27, 2004, marked as Exhibit No. 1 of the record in Case No. 04-06, with the day care center developed in accordance with the plans marked as Exhibits 175 and 212 of the record in Case No. 02-17, as modified by the guidelines, conditions, and standards herein.

2. Condition No. 2 shall be revised to read as follows:

The PUD shall be a residential building, consisting of approximately 173,000 square feet of gross floor area, with no more than 125 dwelling units. The Project shall not exceed a density of 3.95 FAR based exclusively on the site area of the Washington Clinic Land. The building shall not exceed a height of 78.75 feet, as measured in accordance with the Zoning Regulations. The Project may include a roof structure with a height not to exceed ten (10) feet as indicated in the Plans and in accordance with the Zoning Regulations. The design of the roof structure shall not enable the inclusion of occupiable space not otherwise permitted by 11 DCMR § 411.

3. Condition No. 3 shall be revised to read as follows:

The Applicant shall provide affordable housing as described in Exhibit 223. The affordable housing shall be constructed on-site and shall comprise no less than five percent (5%) of the additional gross square footage permitted this project by its approval as a planned unit development under this Order. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with DHCD to make such changes to comply with the same.

4. Condition No. 6 of shall be revised to read as follows:

The proposed building shall provide (i) at least 1.1 accessible parking spaces per dwelling unit, although additional tandem spaces for residents may be provided in the garage; (ii) four (4) parking spaces for the Day Care Center; and (iii) eight visitor parking spaces provided in a surface lot in accordance with the Plans and adjacent to the Day Care Center. These eight (8) visitor spaces shall be provided free of charge to visitors, shall be reserved for use by the Day Care Center during the morning drop-off period (weekdays 7:30–9:30 a.m.) and the afternoon pick-up period (weekdays 4:00–6:00 p.m.), and shall be available for visitor/non-resident parking at all other times. Parking spaces shall be offered for sale separately from the affordable dwelling units, and no purchaser of an affordable dwelling unit shall be required to purchase a parking space.

5. Condition No. 9 shall be revised to read as follows:

The Project shall include approximately 24,700 square feet devoted to open, green space that is readily accessible to the public and has no physical barriers to its entry, as depicted on the Plans. The open space shown on the plans shall not be fenced in or enclosed in any way. No playground for the exclusive use of the day care center shall be permitted on the site. Prohibitions against enclosing the open space and a playground for the exclusive use of the day care center shall be included in the declaration of condominium. The Project shall also include a pedestrian path connecting the residential area with the commercial area, as depicted on the Plans. Landscaping improvements shall be in accordance with the Plans, and shall include a fountain or water feature accessible to the public of at least the size shown on the plans. The Applicant or its successors shall maintain all landscaping improvements in good condition.

6. Condition No. 17 shall be revised to read as follows:

The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212, as supplemented by Exhibit 223, with the following additions:

- A. The Applicant shall contract for construction monitoring services during the course of sheeting/shoring, dewatering, excavation, and the installation of building foundations and below-grade walls. Additionally, the Applicant shall monitor vibrations during its operations and implement a program to evaluate the structural settlement of Surveyed Homes to assure that potentially damaging impacts do not extend to adjacent residential properties. Driving of piles shall be prohibited.
- B. Additionally, prior to the commencement of any blasting at the Site, the Applicant shall have the firm selected to perform the Pre-Construction Surveys perform front-line vibration monitoring by placing vibration monitors on the ground adjacent to the closest structure within the 150-foot monitoring radius, in-line with the blast area, and also at 4228 Military Road, N.W. (Rebold residence) and at 4211 Military Road, N.W. (Kuhn residence). Monitoring shall be observed in real time and, to the extent warranted, immediate action shall be taken to avoid damage to these and other nearby homes.
- C. At least 24 hours prior to any blasting operations on any part of the Site, and with as much prior notice as is practicable, the Applicant shall deliver written notice to the following seventeen (17) addresses:
  - 5343 43<sup>rd</sup> Street, N.W.
  - 5347 43<sup>rd</sup> Street, N.W.
  - 5358 43<sup>rd</sup> Street, N.W.

5360 43<sup>rd</sup> Street, N.W.  
5362 43<sup>rd</sup> Street, N.W.  
5364 43<sup>rd</sup> Street, N.W.  
5366 43<sup>rd</sup> Street, N.W.  
5368 43<sup>rd</sup> Street, N.W.  
4205 Military Road, N.W.  
4208 Military Road, N.W.  
4211 Military Road, N.W.  
4224 Military Road, N.W.  
4228 Military Road, N.W.  
5360 42<sup>nd</sup> Place, N.W.  
5358 42<sup>nd</sup> Place, N.W.  
5354 42<sup>nd</sup> Place, N.W.  
5339 42<sup>nd</sup> Place, N.W.

7. Condition No. 19d shall be revised to read as follows:

To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;

8. The following new condition shall apply to the approval of the Project:

- A. As a condition for purchasing a condominium interest in the Project or for entering into a lease to occupy a unit in the Project, each owner or tenant shall agree not to seek or obtain a residential street parking permit so long as the owner or tenant resides at the Project.
- B. Each condominium owner and tenant who will reside in a unit in the Project shall disclose to the condominium board (or developer), prior to purchasing a unit or signing a lease, information about his or her automobile ownership and the automobile ownership of any others who will reside in the unit.
- C. Each condominium owner or tenant shall be given a parking license agreement with the condominium association or developer pursuant to which the owner or tenant can license one or more parking spaces subject to availability of such spaces. If sufficient parking spaces are not available, Paragraph A above shall still apply in full force and effect. The owner or tenant may waive his or her right to license a space if no tenant of the unit owns an automobile. The parking license agreement may assign one or more specific parking spaces per unit and shall set forth the terms and conditions of the parking requirements of the PUD, as modified. In the event that a unit is rented and the unit is subject to a parking license agreement, the lease shall state that (a) there is a particular parking space

assigned to the unit, (b) the lease is subject to compliance with the parking license agreement, and (c) the monthly parking fee for the space is as stated.

- D. If, following the sale of all condominium units, there are parking spaces in the garage that have not been assigned pursuant to parking license agreements, the developer or condominium board will use commercially reasonable efforts to encourage the lease or sale of those surplus spaces.
- E. In the event subsequent owners or tenants who reside in a unit own automobiles in excess of available parking spaces available under parking license agreements, Paragraph A above shall still apply in full force and effect.

In all other respects, the conditions set forth in Order No. 02-17, dated May 12, 2003, shall remain in effect.

Pursuant to the intent of 11 DCMR § 2409.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs ("DCRA") for the minor modifications until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 02-17 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Z.C. Order No. 02-17 and Z.C. Order No. 02-17A, which the Director of the Office of Zoning has certified. The recordation of the Notice of Modification shall bind the Applicant and any successors in title to construct on and use the site in accordance with this Order and any amendments thereof.

After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.

The minor PUD modifications shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR §§ 2409.2 and 2409.3. Construction shall start within three (3) years of the effective date of this Order.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or


refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

Vote of the Zoning Commission taken at its public meeting on March 8, 2004, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin Hildebrand to approve; James H. Hannaham not present and not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is on AUG - 6 2004.

  
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CAROL J. MITTEN

Chairman  
Zoning Commission

  
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JERRILY R. KRESS, FAIA  
Director  
Office of Zoning